IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3297 OF 2004

Bankim Mehta ... Petitioner

Vs.

Indusind Bank Limited and anr. ... Respondents

Mr. A.A. Pandya i/by Pandya & Co. for Petitioner.

Ms. Vandana Jaisingh for R. No. 1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: OCTOBER 12, 2006

P.C.:

. It is the case of the petitioners that it is his wife who had taken loan from the respondents. The flat is his exclusive property and as such the flat could not have been attached. In the earlier proceedings before D.R.T. Respondent No. 1 had obtained certificate against the Respondent No. 2. They thereafter sought to execute the said certificate which was opposed by the Petitioner herein. That objection was rejected against which an appeal was preferred before the D.R.T. dated 1.10.2004. The D.R.T. after going through the fact recorded a finding of fact that the Petitioner and his wife were shareholders and had interest in the flat. Apart from that an undertaking was given by Respondent No. 2 herein dated 13.3.2001 in O.A. No. 109 of 2003 that she would not dispose of, alienate or transfer the flat, and that has been

recorded. This undertaking must result in defeating the case of the Petitioner that Respondent No. 2 herein had no interest in the flat because the undertaking is of 13.3.2001. Such undertaking could have been given on 13.3.2001 only when she was owner of the flat. The facility was given in January, 2001. This aspect also has been noted by the learned D.R.T.

. The Petitioner thereafter preferred an appeal being M.C.A. No. 341 of 2001. The learned tribunal after considering the facts has recorded a concurrent finding of fact. Apart from that as noted earlier the very fact that Respondent No. 2 has given undertaking on 13.3.2001 must be held against the Petitioner as that undertaking could only have been given if Respondent No. 2 was coowner of the flat. In the light of that, there is no merit in the petition. Accordingly, Petition dismissed.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**